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Counsel for Plaintiffs

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
 Secretary of Health and Human Services, *et al.*,

Defendants.

Case No. 3:20-cv-6018-MMC

**PLAINTIFFS' MOTION FOR
 LEAVE TO FILE NOTICE OF
 SUPPLEMENTARY MATERIAL**

Pursuant to Local Rule 7-3(d), Plaintiffs respectfully request leave to file the attached Notice of Supplementary Material to update the Court on facts relevant to Defendants' Motion for Voluntary Remand Without Vacatur, ECF No. 102 ("Defs.' Mot."). The proposed Notice of Subsequent Factual Development will update the Court regarding the Spring 2022 Regulatory Agenda recently published by Defendant Department of Health and Human Services, which shows that Defendants are not developing a proposed rule to replace the 2020 Final Rule challenged in this case. *See* Notice Attachment A. The fact that Defendants do not expect to issue even a *proposed* rule within the next 24 months is relevant to their request for this Court to exercise equitable discretion by remanding the rule to the agency without vacatur, as it confirms that the undisputed harm to Plaintiffs will persist for years to come. *See* Pls.' Opp'n to Defs.' Mot. for Remand Without Vacatur, ECF No. 104, at 13-17.

Under Local Rule 7-3(d), a party may file supplementary material after a motion's hearing date only with "prior Court approval." The hearing date for Defendants' Motion (as well as the parties' cross-motions for summary judgment) was December 3, 2021. Accordingly, Plaintiffs require leave of the Court to file supplementary material. Plaintiffs contacted Defendants on Thursday, June 30, 2022 to request their position on this motion, but Defendants have not provided their position as of this July 6, 2022 filing.

Dated: July 6, 2022

Respectfully submitted,

By: /s/ Jeffrey B. Dubner
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